IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 10351 of 2005(G)

OS.290/2003 of MUNSIFF COURT, CHITTUR

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PETITIONER:

SHEIKH MUSTHAFA, S/O. SHAHUL HAMEED,
ATTAYAMPATHY, MUTHALAMADA AMSOM, CHITTUR TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.P.R.VENKATESH

RESPONDENTS:

SMT.JNANASUNDARI, W/O. RAJ KOUNDER,
ATTAYAMPATHY, GOVINDAPURAM, MUTHALAMADA,
CHITTUR TALUK, PALAKKAD DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 10351 of 2005

Dated this the 21st day of June 2007

JUDGMENT

There is no appearance for the respondent. The petitioner impugns Ext.P2 order of the appellate court directing the petitioner to furnish bank guarantee for the decreed amount as a condition for grant of stay of execution proceedings pending the appeal preferred by him against a money decree. Even though respondent has been served with notice, he has not entered appearance before this court to resist the prayers in the writ petition.

2. Heard Sri.P.R.Venkatesh, the learned counsel for the petitioner. Mr.Venkatesh submits that it was very valuable security by way of immovable property which was offered by the petitioner and the court below was not justified in insisting that the appellant petitioner shall furnish bank guarantee itself

particularly since the decreed debt was only Rs.30,000/-. According to Mr.Venkatesh, the originals of the title document relating to the immovable property offered as security (copies of which have been produced before this court as Ext.P3)has been produced before the Execution Court and photostat copy of the same was produced before the court of appeal. While admitting this writ petition, this court granted an interim stay on 29.3.2005 for two months. The above order of stay is being continued till date. The appeal is of the year 2004 and obviously the same is ripe for hearing and final disposal. Taking into account that circumstance, I am of the view that the writ petition itself can be disposed of issuing the following directions:

The Execution Court, which is presently in custody of the originals of Ext.P3 title documents relating to the property offered by the petitioner as security will not release those documents before the appeal A.S.179/2004 is disposed of by the District court, Palakkad. The petitioner is restrained from encumbering the property covered by that document any further till the appeal is disposed of. The District Court Palakkad is directed to

dispose of A.S.179/2004 at the earliest and at any rate within three months of receiving a copy of this judgment. Till such time as the appeal is disposed of, the order of stay issued by this court will remain in force.

PIUS C. KURIAKOSE,
JUDGE.

dpk